

61  
performed under conditions selected from the group consisting of reduced oxygen content of the atmosphere or conditions simulating reduced oxygen content of the atmosphere.

40. (New) The tissue according to claim 38, wherein the oxygen content is less than 10%.

41. (New) The tissue according to claim 39, wherein the conditions simulating induced oxygen content are generated by application of compounds being inhibitors of mitochondrial energy production.

42. (New) The tissue according to claim 39, wherein the proliferation of progenitor cells is achieved under at least one of hypoxic conditions and addition of exogenic factors.

43. (New) The tissue according to claim 41, capable of restoring neuronal deficits following transplantation.--

### REMARKS

Claims 26-43 are pending in this application upon entry of this amendment. Claims 1-10, 24, and 25 have been cancelled without prejudice. Claims 11-23 have been cancelled without prejudice to filing a divisional application directed to the subject matter thereof. New claims 26-43 have been added and are supported, for example, in claims 3, 7-10, 14-16, 20, 22, and 23 as initially filed and in the specification, for example at pages 2-4. Accordingly, no new matter has been added, and entry of the amendments is respectfully requested.

### RESPONSE TO RESTRICTION REQUIREMENT

The Examiner has required restriction between the claims of Group I (claims 1-10, 24 and 25) which the Examiner states are drawn to "isolated brain derived tissue containing immunocompetent glial cells," allegedly classified in class 425, subclass 325 and the claims of Group II (claims 11-23) which are drawn to method of tissue culture, allegedly classified in class 435, subclass 377. Initially, Applicant notes that the claims of Group I are drawn to isolated

brain derived tissue not containing any physiologically active amounts of immunocompetent glial cells.

The Examiner takes the position that the inventions of Group II and Group I are related as process of making and product made and that the inventions are distinct each from the other. The Examiner asserts that the claimed product of Group I can be made by other and materially different methods, such as dissection from the natural source.

**PROVISIONAL ELECTION**

Applicant provisionally elects Group I (claims 1-10, 24 and 25) drawn to isolated brain derived tissue, without traverse, for initial examination in this application. In view of the amendments made herein, claims 26-43 are drawn to the same invention (isolated brain derived tissue) as the Examiner defined as Group I. Therefore, examination and allowance of claims 26-43 in the application are respectfully requested.

Respectfully submitted,

**HORST PESCHEL**

October 24, 2007 By: William W. Schwarze  
(Date)

**William W. Schwarze**  
Registration No. 25,918  
**AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.**  
One Commerce Square  
2005 Market Street - 22nd Floor  
Philadelphia, PA 19103-7086  
Telephone: (215) 965-1200  
**Direct Dial: (215) 965-1270**  
Facsimile: (215) 965-1210  
E-Mail: [wschwarze@akingump.com](mailto:wschwarze@akingump.com)

WWS:KMP